

ANDOVER BOARD OF HEALTH
Minutes
March 17, 2014, 6:00 P.M.
CD&P First Floor Conference Room
36 Bartlet Street

The Board of Health Meeting was called to order at 6:05 p.m. Present were Ms. Martin, Chairman, Ms. Katherine Kellman, Vice-Chairman, Gopala K. Dwarakanath, M.D., Clerk and Mr. Thomas G. Carbone, Director of Public Health.

I. Approval of Minutes

- **February 13, 2012 (Executive Session)**

Motion by Ms. Martin, seconded by Ms. Kellman, to continue the February 13, 2012 Executive Session for six months to the August Board of Health Meeting. Unanimous approval.

- **February 10, 2014**

Motion by Ms. Martin, seconded by Ms. Kellman, to approve the Minutes of February 10, 2014. Unanimous approval.

II. Appointments & Hearings

- **6:00 p.m. – John Galanis for Phillips Academy Wellness Center Project – Variance Request to Allow a 150 Gallon Grease Interceptor in Lieu of a 1500 Gallon Grease Trap** – Mr. John Galanis was present at the Meeting. Mr. Carbone informed the Board that a Notice of Public Hearing was posted stating that Phillips Academy was applying for a Variance from local sewer regulations that require a 1500 gallon grease interceptor for the proposed Wellness Center Project. Mr. Galanis explained that Phillips Academy has been designing for a year to consolidate the Isahm Infirmary and the Grand Counseling Center so they can get wellness all together in one building. He has worked with Mr. Carbone to design the kitchen. Normally food is served at Paresky Commons across the street; however, after they close they need to have access to some food for the student patients. It is a small kitchenette and will only be used if a student wakes up in the middle night needing food. The only items to be connected to the proposed grease trap are a wash sink, dump sink and under-counter dishwasher. Therefore, they are asking for a Variance to reduce the size of the 1500 gallon grease trap for something designed for a dishwasher and two sinks. They have had their Plumbing Engineer calculate the size needed and determined that a 150 gallon exterior grease trap would be sufficient.

They have calculated that the food preparation will be comparable to two meals per day. Mr. Carbone explained that if a student needed a meal after hours, the student would not be asking for a full meal. Most likely toast, a scrambled egg or something else light would be requested. Mr. Galanis stated that there are five semi-private

rooms with two students in each room, and two private rooms for a total of twelve students. He would not be expecting all of them to wake up every evening asking for food. Mr. Carbone stated that he expected this kitchen to be a minimal grease collector. Mr. Carbone recommended that the Board approve the Variance with the conditions put forth in the following motion.

Motion by Ms. Martin, seconded by Ms. Kellman to approve the use of a 150 gallon in-ground interceptor instead of a 1500 gallon grease trap, subject to the following conditions:

- 1. The grease interceptor shall be inspected monthly for the first year of use, and cleaned as necessary. Cleaning shall occur during this time at least once every 3 months.*
- 2. During inspection, a written log shall be kept indentifying the amount of accumulated grease and any other notes appropriate. Any grease removal shall be documented.*
- 3. After 12 months of use, the applicant shall prepare a written review of the system and propose a regular inspection and maintenance plan for approval by the Health Director.*
- 4. The manufacturer's Operation and Maintenance Guide shall be followed.*

Unanimous approval.

- **6:10 p.m. – Matthew Gardner for Andover Portland Ave. Associates, LLC, for Building 3, Unit 313 Casco Crossing – Appeal of Orders** – Present were Mr. and Mrs. Ciampa, Tenants of Unit 313, Ms. Maddy St. Amand, Andover Commission on Disability, Stephen Stapinsky, owner, Attorney Ted Papadopoulos, Attorney representing Andover Portland Ave. Associates, and Mr. Matthew Gardner, Casco Crossing Manager. Ms. Martin stated that Casco Crossing was ten years old, and requested a little background of the units. Mr. Gardner stated that Casco Crossing is located at 168 River Road and has four buildings with twenty-four units per building. Each building has 75 two bedroom units and 25 one-bedroom units. Mr. Carbone stated that he received a call from Mr. Ciampa requesting an inspection of his unit at building 3, Unit 313. As a result, Mr. Carbone issued a Violation ORDER to have several violations corrected. In response, Mr. Gardner requested an Appeal of item #2 which states “The call box at the door does not appear to be operable; I attempted to dial both the unit number and use the scroll to find the unit owner name and could not reach anyone (4101.480(C); 410.351).”

Attorney Papadopoulos stated that the basis of the appeal concerned what is or is not grandfathered. The permits to build were issued in 2004 under the Sixth Edition of the Building Code, which had no requirement for an intercom system. He had a copy of the section of the Building Code that applies to this issue. Requirements regarding an intercom system were first introduced in the Eighth Edition of the Building Code as a two-way intercom system for buildings that have more than three units. He provided a copy of the Massachusetts Register to the Board Members ¹ which shows that in 2010 the Building Code required an intercom system. Ms. Martin asked Attorney Papadopoulos what the call box does right now. Attorney Papadopoulos replied that is only used as a lock and the door opens when a password is entered on

¹ A copy of the Mass. Register was inserted into the packet after page 32D.

the keypad. The residents know the password and can give it out to any guests coming into the building. Ms. Martin asked if the keypad has the ability to be an intercom. Attorney Papadopoulos stated that the keypad is a call box, but was only set up as an access pad, so if it was to be used as a call box it would have to be rewired. They have looked into what it would cost to change this particular device into an intercom system and bring this to what the code currently says and the cost would be high. They would be willing to look into putting in an intercom system, but only if the Board decides there is some kind of safety concern or hazard that overrides the grandfather provision. Ms. Martin stated that that was why she wanted the description of the call box because the requirement is that equipment shall be fully functional, and this has a function that is not working. She stated that she could see the advantages from occupants' perspective because they may not know a visitor is there and unless the visitor has a cell phone there is no way to notify the tenant that a visitor is there.

Attorney Papadopoulos stated that this system has been working well for the past ten years, and they have not received any complaints until now. He pointed out that the resident's Complaint Form did not have this stated as an issue. He stated that the system has been operating as intended. Dr. Dwarkanath stated that if someone has the passcode, that person could come into the building and go to someone's door without the resident's knowledge. With an intercom system, the resident can ask who is at the door, and asked if Attorney Papadopoulos felt there was room for improvement, or is the present system as good as it can be. Attorney Papadopoulos answered that a visitor can get into the common area, but the individual apartments would be locked. He reiterated that the intercom system was not required or intended to be used that way at the time the building was built.

Mr. Carbone explained that when you approach the building, there is a space above that has a window that is supposed to list the names and unit numbers of the residents. There is a statement on the box that says enter number or use the scroll buttons to find the person you need to contact. Ms. Martin stated that since they are calling it a call box but only using it as a pass key lock, the interpretation is that it is a piece of equipment that is not fully functional for its intended purpose; that means that it does fall under a requirement to get it fixed. Since you put in a functional call box, it should have been functional, even though it wasn't part of the Building Code at the time.

Mr. Stephen Stapinsky of Andover Portland Ave. Associates, LLC, spoke and stated that he was responsible for permitting the project and the Building Inspector and Board of Health did not require an intercom system at the time. The box that is there now is about the only box you can buy that has the ability for someone to punch in a code and unlock the door. The only boxes that were made at the time were the ones that had the unit owners' names on it. There was never a requirement to connect it to an intercom system and the units do not have intercoms, so you cannot buzz the units. Mr. Stapinski stated they would have to cut a hole in every wall, put an intercom in,

and run wires from the front box to the units. It is a lot of work and it was never required under the code.

Dr. Dwarakanath asked why it is called a call box if it is not going to be used as one. Attorney Papadopoulos restated his explanation of the 2004 code, and that based on that code, there was no law to have any box at all, so this box was more than what was required at the time. He felt that to now say this box has additional functions, so those functions should be used is incorrect unless there is an issue of public safety. He stated that in 2004 the only requirement was to have an electric striker and the automatic function of the door.

Mr. Thomas Ciampa, Tenant at 168 River Road, Unit 313, explained that he is disabled. He stated that the door opener never worked and is very hard to open. He was concerned because his nurses cannot come in because the door won't open, so they have to call him on their cell phone to let him know they are there. There have also been times he has missed the nurses' visits as well. Mr. Carbone stated that the complaint was that the door was not opening properly and when he was there, the maintenance man was working on it and told him that a new door was coming. Ms. Maddy St. Amand with the Andover Commission on Disability was recognized by the Board. Ms. St. Amand stated that she was one of many people who have rendered service to the Ciampas. She stated that she had problems accessing the Ciampas because there is no way to scroll to find out what number apartment they are in. Also, the Visiting Nurse reports having the same issue. Mr. Ciampa knew they were coming and had to walk down to the front door and look for them. A functional notification system is needed. Mr. Ciampa stated that another concern is that everyone knows the code, so that is a safety issue as well. He was asking for mercy from the owners and the Board of Health to help him with this issue. He felt that the call box was there for a purpose, and that it should serve that intended purpose.

Ms. Martin stated that she knows there are other options for the call box other than running wires to each apartment. There are call boxes that can dial into a person's home phone number. The apartment building does need security so unauthorized people cannot enter the building. People think there is a function there and when they try to scroll down it doesn't work. Attorney Papadopoulos stated that they could put up a sign stating that if that is what the Board wanted. Mr. Stapinski stated that they could remove the box, replace it with a blank plate and put a code on the door handle. Ms. Martin stated that if they made any changes, then they would have to comply with the present Building Code. Mr. Stapinsky stated that people such as Meals-on-Wheels or medical personnel who need to access the building are provided with the code. Every renter is told that there is a passcode that they will have to use. The code is changed often so people don't know it for long. Dr. Dwarkanath asked the Manager if he has received any complaints. He replied that he has lived there for about six years and hasn't gotten any complaints until now. Mr. Ciampa stated that there have been more people in the building complaining, but not to Mr. Gardner.

Attorney Papadopoulos stated that the callbox issue was not in the original complaint. Mr. Carbone explained that when a staff Inspector comes to do an inspection the

occupant has the right to point out problems that need to be addressed, and have the right to receive a top to bottom inspection. When Mr. Carbone does an inspection he goes room to room and can find other items of concern. This inspection was a combination of both. The problem with the door and the lack of call box was one of his concerns of the violations. Mr. Carbone shut the door and tried to put in Mr. Ciampa's number, but couldn't get the door to open, so that had to be added to the violation.

Mr. Carbone referred the Board to a 2002 notice from the Massachusetts Department of Public Health (MDPH). It states that a case in Norfolk Superior Court relied on the MDPH interpretation of the code as written: that there was a requirement that they had to have a call box and remote access for a rooming house with multiple dwelling units. Attorney Papadopoulos stated that the whole court case was not provided and nowhere does it say that in 2004 there was not a requirement for an intercom. Ms. Martin stated that is an implied service and doesn't work, so she wants them to further investigate and research to reach a better solution.

Motion by Ms. Martin, seconded by Dr. Dwarakanath to continue the Hearing until the April 14, 2014 Board of Health Meeting to get an update on what options are available to bring the call box into compliance and to function with its intended use. Unanimous approval.

- **6:15 p.m. - Daryl and Brenda Afshin for 7 (a/k/a 7R) Lowell Junction Road – Condemnation Hearing (Continued)** – Mr. Carbone informed the Board that the Afshins have submitted sewer connection plans and are currently being reviewed by staff. Since the connection to sewer is moving forward, Mr. Carbone recommended that the Board continue the Condemnation Hearing for two months.

Motion by Ms. Martin, seconded by Ms. Kellman, to continue the Condemnation Hearing to the May 12, 2014 Board of Health Meeting. Anonymous approval.

- **6:30 p.m. Public Hearing on Proposed Tobacco Control Regulations** – Ms. Martin asked all participants to sign the sign-in sheet². Ms. Martin went through a list of the protocol that should be followed. Once the Hearing is open, the Board will try to recognize everyone, and asked that participants do not talk until recognized. For any regulation that the Board Members develop or modify, they like to get public comment and try to understand both sides of an issue because there may be things the Members have not considered. This Hearing is intended as an outreach to get feedback from the community. Decisions will not be made during the Hearing. Once the Hearing is closed, public comment will no longer be solicited, and then the Board will confer among themselves. A time limit of 10 minutes may be imposed.

Ms Martin opened the Hearing for the proposed Tobacco Control Regulations.

Ms. Martin stated that a number of new products have prompted the update. Around four years ago, the regulations were modified to include outdoor seating and the

² The sign-in sheet was added to the Agenda Packet after page 33C.

prohibition of smoking because the establishment would still be considered a restaurant. In the proposed revised regulations there are a number of things added. There are now new types of products in the market such as blunt wraps and e-cigarettes so there are sections adding these products to the regulations. Some of the changes are: additional requirements for non-mobile establishments; any outstanding fines will be obligated to be paid before transference of ownership; prohibition of the sale of single cigars or cigarettes; no vending machines at any educational facility; and prohibition of smoking bars. The timeline for the revised regulations to be in effect may be over the next two months. After the Hearing, the Board will make the revisions. Mr. Carbone stated that if minor revisions were being made, the timeline may be less. If there are major changes to be considered, the Board could reopen the Hearing to address that particular section. Mr. Carbone recommended after the Hearing the Board make the changes, send them to Town Counsel for review and then adopt them.

Ms. Martin opened the Hearing up to the floor.

First to speak was Mr. Steve Ryan, Executive Director of the New England Convenience Store Association (NECSA). This is a trade association that has convenience/fuel retail stores in Andover and the surrounding communities. They have no problem with most of the provisions. The issue they have is in regards to the regulation that cigars of a certain price point have to be sold in multiple packs. The issue for their members is that they want to be able to sell products adults want to purchase. The FDA does compliance checks in every community in Massachusetts. For over two years the retailers in Andover have had a 100% compliance rate. Mr. Ronald Beauregard, Director of the Tobacco Control Program, stated that he believed that information was correct. His organization does one check a year at these establishments. Mr. Ryan stated that the issue with the cigar restriction is the argument that these are sold to minors, but the compliance data doesn't support that. Cigars are a different product. Sometimes a person only wants to buy one for fishing, or just to enjoy one once in a while. If people buy cigars in a four-pack, then they will smoke all four instead of the one they really would have smoked. If you take away the choice of buying one cigar at a time, then that consumer will take his business to another community that does. Then they will buy other convenience items as well, and their business will move to other communities that provide the consumer with what is wanted. Mr. Ryan submitted a letter from the NECSA supporting the sale of single cigars.³

Next to speak was Diane Knight, Director of the Northeast Tobacco Free Community Partnership that serves the Town of Andover and other Merrimack Valley Communities on initiatives to lower smoking prevalence, reduce exposure to second hand smoke, and to end youth access to tobacco products. She thanked the Board for proposing the new regulations to help protect our youth from access to these highly addictive tobacco products and nicotine delivery products, and for protecting the community from second hand smoke with the Board's concerns about the outdoor

³ A copy of the letters have been added to the Agenda Packet after page 43.

seating law. A big concern is for the inexpensive, glittery packed cigars that come in candy, fruit and alcohol flavors and only cost 69¢ each. These single packaged cigars are geared toward the youth. No man wants a candy flavored cigar. They are cheaper and marketed to kids, and they are in possession of them. Ms. Knight would be in support of the minimum four packs of cigars because of the higher price. Research shows that increased cigar prices will reduce cigar use. Since most smokers begin to smoke before the age of 18, we must do everything we can to prevent our youth from even starting. People who start smoking as adolescents smoke more and have a harder time quitting than people who start as adults because of the way smoking changes the adolescent brain. She is also concerned about the non cigarette smoking young people getting addicted to nicotine by the use of e-cigarettes. They look like gel pens and parents may not even be aware that their child has them. The use of these products can result in kids needing more tobacco. Part of her work is educating parents about what these products are and how they are being marketed to kids. E-cigarettes are non-regulated and not FDA approved. There are 7,200 Massachusetts youth who become smokers every year which doesn't include e-cigarette users. Ms. Knight thanked the Board for its commitment to public health.

Next to speak was David Proler from Verc Enterprises who operates the River Road and Lowell Street Mobil stations. He explained that they, as retailers, do not care if they sell one cigar or many. The ID procedure and policy is in place regardless of the product that they sell. They understand their civic responsibility. Most of their associates live in these communities, and they have kids, families, they pay their taxes, and use the services throughout the town. With due respect to the previous speaker, however youth get these products is a statement that we in the industry have a problem with. They are placing restrictions on tobacco retailers based on testimony where they don't know the origination of the product. Their mission to educate parents is immensely important. He stated that he knows how important it is to talk to kids about smoking. He tells his seven year old son what he sells and educates him on the products. We also educate all our associates about the products. The State and Federal Government outlines all their policies concerning age. He pointed out that his perception and a teenager's perception of a person's age are different. Their answer to that is their rule # 1; if you don't know a person, you card them. He hopes that the direction the Board goes in attacks the route of the problem the Board is looking to get to, which is reducing youth smoking. His business sells to adults only.

Next to speak was Maryanna Nagle and Bahaa Dalloul, Plymouth, MA, owners of - Lux Hookah Lounge in Plymouth. Ms. Nagle stated that currently the Town of Andover goes by the MGL Chapter 270 §22 and under those laws Hookah Bars are allowed. She stated that at their Plymouth location they also sell only to adults 18 years of age or older. For their establishment there is no incentive for youth because they do not sell alcohol or food. They sell a cultural experience that is relaxing and specifically about hookah. When the Board had concerns about the safety, she gave multiple studies at the last Board of Health meeting. They have trained servers taking care of the entire operation.

Dr. Dwarakanath stated that he did some research like he stated he would at the last Board of Health meeting. He looked at the CDC and Mayo Clinic studies. The CDC study showed that the use of charcoal produces high levels of carbon dioxide. The smoke passes through water, but really doesn't filter. The tobacco is easier to inhale but doesn't reduce the quantity of nicotine. The Hoohah water was tested as well to see how much nicotine was there, and they found that it did not filter and reduce the quantity. There really is not less nicotine when using a Hookah; when you light a cigarette you smoke for a few minutes, where Hookah can be smoked up to an hour, with more inhalations than cigarettes. The Mayo Clinic Study shows that the water doesn't filter the nicotine out more because of the large amount of puffs during a session. They also found that it contains heavy metals and carbon monoxide and is linked to lung cancer and heart disease. You can always find a study contradicting this, but those journals have not gone through as much research. Ms. Nagle stated that she did not agree with the studies because they use a machine to test instead of a human being. Dr. Dwarakanath stated the CDC and Mayo Clinic are very careful when doing their research and felt it was scientifically sound.

Ms. Martin stated that if no one smokes at all, people would not get cancer. Ms. Martin realized that it is a cultural thing. Dr. Dwarakanath stated that since the atmosphere is relaxed, people may smoke for longer periods of time. Ms. Kellman stated that, as a non-smoker, the idea sounds really appealing and enticing, and could be a wonderful experience. That this seems so enticing, that is a bad thing because people who do not smoke may try the Hookah and now you would have more people being exposed to nicotine. Dr. Dwarakanath stated that culturally it sounds like a great thing, but as the Board of Health members, we are supposed to support health and have to do the right thing for the community at large.

Last to speak was Anna Bettencourt who works for Verc Enterprises and is affiliated with Mr. Ryan of NECSA. As a company they own 24 convenience stores and two of them are in Andover. One thing she has heard from the speakers that is consistent is the young age of nicotine users. Verc Enterprises never market to youth. There are different flavors and adults sometimes have a preference. There are different price points because it is a different type of cigar. She stated that they train all their employees by the "We Card Program". Their rule is if you don't know the customer, no matter how old they appear to be, an ID is asked for. As a retailer her concern is also that if someone sells single cigars in another community, her company will lose business to them. Not only will they lose the sale of the single cigar, but they will lose grocery and gas sales which will affect the profitability of the company and the employees.

Ms. Martin closed the Hearing for public comment. She stated that she appreciated everyone coming out to contribute to the discussion. She stated that the different perspectives presented will help the Board to make regulations that can be well enforced. No further discussion was needed, and this will be addressed again on the next month's 4/14/2014 Board of Health Meeting on.

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to close the Public Hearing on Proposed Tobacco Control Regulations. Unanimous approval.

III. Discussion

- N/A

IV. Old Business

- N/A

V. Subdivision Definitive Plans

- N/A

VI. Plan Review

- **DWRP – Variances/Local Upgrade Approval**
- N/A

VII. Staff Reports

A. Director's Reports:

- **Important Dates:**
 - April 14, 2014, at 6 p.m. – Board of Health Meeting
 - May 5 & 6, 2014 – Annual Town Meeting
 - May 12, 2014, at 6 p.m. – Board of Health Meeting

B. Nurses' Report for February, 2014 – The Nurses' Report for February, 2014, were for informational purposes only.

C. Inspectors' Reports for February, 2014 – The Inspectors' Reports for February, 2014, were for informational purposes only.

VIII. Board Member Reports

- N/A

IX. Adjournment

Motion by Ms. Martin, seconded by Ms. Kellman, to adjourn at 7:54 p.m. Unanimous approval.